IN THE COUNTY COURT OF VICTORIA

Revised
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AT MELBOURNE
CRIMINAL JURISDICTION

CR 19-01025

DIRECTOR OF PUBLIC PROSECUTIONS

v

SHEREE BECKER

JUDGE:	HIS HONOUR JUDGE MCINERNEY
WHERE HELD:	Melbourne
DATE OF HEARING:	Trial: 2 August – 2 September 2022 Plea: 15 September 2022
DATE OF SENTENCE:	16 and 29 November 2022
CASE MAY BE CITED AS:	DPP v Becker
MEDIUM NEUTRAL CITATION:	[2022] VCC 2058

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW
Catchwords:	Obtaining financial advantage by deception – ANZ Bank – Contracts of sale – Deposits – Loans – Verdicts of guilty
Legislation Cited:	s 82(1), s6H1(c), s6I(1) and schedule 1A1(e) Crimes Act 1958 (Vic), – s 23 *Sale of Land Act* 1962 (Vic)
Cases Cited:	*Gould* [2021] NSWCCA 92 – *Chiro v R* (2017) 260 CLR 425 – *R v Di Simoni* (1980) 147 CLR 383 – *Cheung v R* (2001) 209 CLR 1 – *R v Isaacs* [1997] 41 NSWLR 374 – *Friel v R* (2018) VSCA 48 – *R v Roussety* [2008] VSCA 259 – *Shiel v R* [2017] VSCA 354 – *Grossi* [2008] 23 VR 500 – *DPP v Peng* [2014] VSCA 128 – *Dalgliesh* (2017) 91 ALJR 1063 – *R v Schwabegger* [1998] 4 VR 649 – *R v Merrett & Others* [2007] VSCA 1 – *Markovic* (2010) 30 VR 589 – *R v Panuccio* (1998) VSC 300 (unreported Court of Appeal 4 May 1998) – *Rezai v R* (2020) VSCA 106
Sentence:	Total effective sentence of 3 years and 6 months with a non-parole period of 15 months. The offender is sentenced as a continuing criminal enterprise offender on each charge.

APPEARANCES:	Counsel	Solicitors
For the Director of Public Prosecutions	Mr A. Albert	Mr S. Kenna
For the Accused	Mr A. Lewis with	Ms M. Le

Ms K. Ballard

HIS HONOUR:

1 Ms Becker stood trial in regard to the seven charges of obtaining a financial advantage by deception contrary to s 82(1) of the *Crimes Act* 1958 (Vic) contained in indictment C1713703A. Mr Lewis and Ms Ballard appeared on behalf of Ms Becker. Mr Albert appeared on behalf of the Director.

2 After a trial lasting 22 days, on 2 September 2022 Ms Becker was found guilty of all charges. Given the particulars to each charge, the jury were instructed that to record any finding of guilt they would have to be unanimous, as to any one of the particulars to each charge or all of the particulars.

3 I did not further question the jury after their verdict, albeit as Mr Lewis reminded me, I had sought the views of the prosecution in this regard and the prosecutor did not request that I do that. (See pp76-78 of the transcript.) No request was made by the defence counsel that any such enquiry should be made.

4 During the charge the jury were handed an element sheet which detailed the unanimity requirement as to the particulars. (See Exhibit P4 for identification.) Indeed during the deliberation on 1 September, the jury raised a question as to Charge 4, particular A, whereby the original element sheet had apparently created some confusion as to that charge. (See jury question no.4.)

5 Following discussion with counsel the element sheet was amended to overcome the confusion which the jury had detected during their deliberations, new element sheet P12, marked for identification, with further directions provided by me.

6 Following further discussion with counsel after the jury retired to the jury room, it was decided that in order to ensure the requirement for unanimity was crystal clear, to further amend part (d) of element 2 to ensure the

consideration of part (d) of element 2 would relate only to any unanimous finding made under part (a) of element 2.

7 The jury were recalled and handed a further amended element sheet, that being marked P13 for identification, and given further directions as to unanimity. The jury were required to hand back the element sheet which they had been given, P12, and then retired with the new element sheet, P13.

8 Following the jury verdicts the matter was adjourned for plea to 15 September 2022. Prior to the plea on 14 September, the defence filed submissions, Exhibit 1 on the plea, as did the prosecutor, Exhibit A on the plea. The prosecutor filed an addendum submission on 15 September 2022, being Exhibit B on the plea.

9 Under the heading 'Basis for sentence', [6]-[18], Mr Lewis submitted that given no queries were made of the jury, and on the basis of the verdict of Charge 1, which concerned the false payslips utilised by way of complicit agreement, the jury should be taken to have accepted the evidence of Mr Akkala.

10 Hence Mr Lewis submitted that Ms Becker should be sentenced on the most favourable interpretation of the verdicts, which would mean that the direct liability alleged in Charges 2, 3, 4, 5, 6, and 7 being the alleged false representations as to the deposits being paid as detailed in the relevant contracts of sale, and in regard to Charge 5, it was in addition argued that again it could not be concluded the jury were satisfied as to the reference of the deposit receipt being causative of the obtaining of the financial reward.

11 At the plea I indicated I was not enamoured with such argument. The prosecution in its submission, see Exhibit B on the plea, and at the plea, argued that such submission should not be accepted. Mr Lewis also made further oral submissions in that regard.

12 After such plea I allowed Mr Lewis to lodge further submissions on the issue of *Gould* [2021] NSWCCA 92. Such was filed on 10 October 2022 and became Exhibit 11 on the plea. I also allowed Mr Lewis to make written submissions as to whether, if he failed on the *Gould* argument, I as sentencing judge could be satisfied beyond reasonable doubt as to the particular A in Charges 2, 3, 4A(a), 5, 6 and 7, and if so whether each such particular was causative of the obtaining of the financial advantage.

13 Subsequently on 28 October 2022, in response to Mr Lewis' submission, Exhibit 11, the prosecution filed further written submissions which will become Exhibit C. I have considered all such submissions.

Determination - Basis for Sentencing

14 Importantly in this case, the jury was directed as to the need for unanimity as to the particulars in any charge, and that they could find the charge proven on the basis of satisfaction beyond reasonable doubt of one or other of the particulars or all, in any charge.

15 Neither counsel sought during pre-charge discussions, nor in discussions which took place as a result of the jury's question as to Charge 4, that I should enquire as to the determination by the jury after the verdict.

16 The particulars do not contain a hierarchy of offending as was the situation in *Chiro v R* (2017) 260 CLR 425 at 425. Nor does the verdict of guilty allow for a situation as detailed in *R v Di Simoni* (1980) 147 CLR 383, where a determination by me as to which particulars the jury found would lead to Ms Becker being subjected to a more serious charge or a higher statutory penalty.

17 The prosecution submission essentially adopted the reasoning detailed at [165] of *Gould*. That is, that the Court should follow the authorities of *Cheung v R* (2001) 209 CLR 1, and *R v Isaacs* [1997] 41 NSWLR 374, and determine

the facts consistently with the verdicts of the jury, including which of the particulars had been made out beyond reasonable doubt (accepting in this case the jury's verdict meant only that at least one had been made out).

18 Having considered all of the submissions that I have detailed in that regard, I accept the prosecution submission and intend to determine which particulars the jury would have been satisfied were made out beyond reasonable doubt. As I say again, accepting the jury verdicts meant only that at least one had been made out.

Findings of Guilt - in regard to Charges 2-7

19 In order for me to appropriately perform the sentencing task in this case, in regard to the findings of guilt in Charges 2-7 as to the other particulars, given the defendant's acceptance of the jury's acceptance of the Akkala particular in regard to the payslip in each of the Charges 1-4 and 6-7 and particular B in Charge 5, it is necessary to analyse the evidence before the jury.

20 In this regard I note that such analysis, albeit not with the requirement of standard of proof now involved, as to such direct liability charges was required when the no-case submission was made. (See ruling on 26 August 2022).

21 I am satisfied beyond reasonable doubt upon analysis of the evidence before the jury, that the jury would have been satisfied in each instance of the particular concerning the false representation contained in the contracts as to the deposits having been paid or paid by the applicant purchaser, and that such was a causative fact in the bank advancing the loan funds in each instance to the applicant purchaser for the following reasons:

(1) Ms Becker conducted her business/'business model' dealing with persons with very limited financial means or who were actually in economic distress;

(2) Ms Becker had come to various financial arrangements with the vendors,

whereby they entered into agreements to sell their properties, find a purchaser, gave authorities by way of powers of attorney for Ms Becker, or in Charge 2 her father to on-sell the properties, and thereby discharge the mortgages that the vendors had over their properties or repay funds to Ms Becker that she had paid to such vendors;

(3) Ms Becker found the purchasers in each instance, who were equally of impecunious means and Ms Becker determined the sale price on such contracts;

(4) The contracts were all prepared by Ms Becker as the estate agent acting for both parties;

(5) In order for the 'business model' to work, funding was required, such funding was obtained by applying for loans from the ANZ Bank;

(6) Each of the borrowers gave evidence that they had not paid the deposit as detailed in their individual contracts submitted by Ms Becker to the bank;

(7) Akkala gave evidence of having conveyed to Ms Becker the ANZ loan policies and procedures as advised from Mr Anand. Further, I am satisfied upon the basis of Ms Becker's experience as an estate agent, drawing contracts in this “business model”, that she was aware that provided the purchase price in such contracts was under $750,000 with a 5 per cent deposit, and a real estate agent was involved in the transaction, then the contract on its face would satisfy the bank as to the purchaser's level of genuine savings and as to the valuation of the property where the loan to value ratio was under 85 per cent (Exhibit P8 on the trial).

Note: In the one instance where the LVR exceeded 85 per cent (Charge 5) a receipt for deposit allegedly paid from Ms Becker's real estate agency was

provided. (Despite the purchaser, Mr Edmondson, not only indicating he had never paid such a deposit, but never having received or seen such receipt);

(8) The reason in each case loans were made by Ms Becker to the purchasers, but for Charge 2 which in fact was a loan from the vendor arranged by Ms Becker, was to allow the settlements to go through by providing the funds purported to be paid as deposits under the contract, so that the settlement could be effected. (This did not occur in Charge 2. There was no actual loan effected);

(9) Once settlement was effected, Ms Becker:

(a) was able to pay any outstanding monies to the vendor, after the vendor's mortgage was paid out or payment she had made to the vendors was deducted or commission was deducted;

(b) she would then receive personally any profits then available to her from the balance of the bank advance;

(c) she would place the purchasers in possession of their house; and

(d) she would receive interest from the mortgages she had granted to the purchaser/ borrowers and eventually hopefully repayment of the funds she had advanced to effect settlement.

22 As to the specific submissions contained in the written submission of the defence dated 10 October 2022, Exhibit 11:

Submission in [12] - [20]

23 As detailed to the jury by the prosecution and myself and discussed with the defence prior to such direction, I find there is direct written evidence of the false representation as to the deposit. The contracts prepared by Ms Becker

in the six charges detail on their face the relevant deposit as being paid and paid by the purchaser. It is with respect fatuous to suggest otherwise.

24 In the two instances, that is Charges 3 and 4, where the fact of payment is not specifically stated or has not been filled out, equally, when one does the calculation upon the figures detailed in each contract it is also fatuous to suggest a jury could not readily infer beyond reasonable doubt that a representation that a deposit having been paid is what each contract states.

25 Juries are of course asked to use their common sense. We are talking of a real estate agent who has prepared the contracts in order to apply for a loan for the purchaser from the bank.

Submission in [16] - [19]

26 Clearly as given in evidence by Mr Carswell on behalf of the ANZ Bank, if the deposit had not been paid by the purchaser, or if loans were being obtained from others to make up the deposit, no loan funds would be forthcoming from the bank. Further he said, if anything about such contracts was seen or known to be fraudulent, no loan would be approved by the bank. (See his evidence transcript p104 and 121).

27 I find that section 23 of the *Sale of Land Act* does not allow a subsequent payment, made post the contract date, to validate false figures as to a deposit in the contract forwarded earlier by Ms Becker to the bank as part of the loan applications. In this regard I refer to the ruling that I made concerning s23 on 29 August 2022.

28 Charge 4 and [21] of the Submission

29 The question is what could the jury determine beyond reasonable doubt as to status of the contract price. (See particular A(b)). The contract was prepared by Ms Becker. The purchaser said he never agreed to a purchase price of

$389,000, and never paid a deposit as detailed thereon, and only signed the contract with the elevated price of $405,000 when presented with it by Ms Becker, because it was as Ms Becker said, it was necessary to: 'make the loan good for the bank' in order to get the loan. He had previously signed a contract in the sum of $389,000 which he understood to be the purchase price. (See transcript p790).

30 The vendor in this instance Templeton, had entered an option agreement to sell the house to Ms Becker in 2011 for $365,000, albeit that he signed the contract for $405,000 when presented with it by Ms Becker. (See transcript 728). He at no stage was given or understood he was to be given any amount of the increased purchase price which Ms Becker had put in the contract which went to the bank. (See transcript p729).

31 I find that clearly on the evidence a jury could be satisfied beyond reasonable doubt that the purchase price of $405,000 was false as detailed in the contract forwarded to the bank by Ms Becker.

Submission in [22] as to the mens rea elements

32 I find beyond reasonable doubt a jury could be satisfied Ms Becker was aware the representation as to the deposits was false when made in each charge as at the date of the contract. Contracts were forwarded to the bank for the purpose of obtaining a loan, and the bank was never advised by Ms Becker of any arrangements, made by her or anyone else, that she would make up deficiencies as to the deposits represented in the contracts of Charges 3-7.

33 I refer to my ruling in this regard on 29 August 2022.

34 It is not to the point what the purchasers may subsequently have believed the loans from Becker were for. It is not possible for such funds to be utilised

retrospectively to overcome the misrepresentation/deceptions involved in the contracts which were presented and lodged to the bank.

Submission in [23] as to causation

35 For the reasons detailed in my no-case ruling of 26 August 2022, and on the basis of such reasoning, I am satisfied beyond reasonable doubt that the jury were justified on the evidence in the trial and would have found beyond reasonable doubt the causative elements as set out in 2(d) of the element sheet, and further as to the dishonesty in element 3 were established. In particular, that it could be inferred on the evidence that the ANZ Bank would not have granted each loan if it was aware that:

(a) A deposit was not paid;

(b) A deposit was not paid by the purchaser;

(c) There was a false representation contained in the contracts as to (i) the deposit, (ii) the purchase price, (iii) as to the deposit receipt filed in Charge 5 (particular B) and (iv) Charge 4 (particular A(b)).

36 If it is not clear, given the added complexity that has now overtaken this case, I am satisfied beyond reasonable doubt on the basis of the evidence presented to the jury that they would have concluded beyond reasonable doubt that all of the particulars detailed in Charges 2-7 were proved beyond reasonable doubt.

Ms Becker's role in the offending

37 I find beyond reasonable doubt Ms Becker played the major role in each of these seven charges. I accept Mr Albert's submission in that regard (see Exhibit B [7]) that she was the instigator/driver. (See also Exhibit C [31(b)]).

38 Ms Becker sought out the assistance of Akkala as the 'go-to person' or intermediary to arrange loans, produce false payslips and was aware that Akkala was utilising an ANZ operative, Anand.

39 However I find she was playing the major role in each charge on the basis of her 'business model' of operation to obtain funds from the ANZ Bank in order to criminally populate each of the seven transactions she had orchestrated with funds.

40 To use the words in *Friel v R* (2018) VSCA 48, [38], this was persistent, planned and sophisticated criminality for which harsher penalties are obviously open. Of course the amounts in each charge are much higher than the threshold which relates to continuing criminal enterprise offences.

41 I further find these seven crimes were an orchestrated attack on the banking system, irrespective of how complacent or negligent the banking practice at the time was and that such practice may have facilitated such crimes. Such criminality calls for a sentence which effects general and specific deterrence and curial punishment.

Prosecution submission

42 Exhibit A on the plea called for a custodial sentence with a non-parole period.

43 The prosecutor noted that the jury findings bring in to play the continuing criminal enterprise provisions being s6H1(c), schedule 1A1(e) and s6I(1) which increase the maximum penalty for each offence to 20 years imprisonment. He also referred to *R v Roussety* [2008] VSCA 259, at [36].

44 Although there was no submission from either counsel in this regard I note as to sentencing the comments of Ashley JA as to it not being inevitable that a heavier sentence should be imposed (see [59]) and Redlich JA as to the question of whether all offences are part of a particular criminal scheme,

which clearly applies to Ms Becker's crimes. Hence as His Honour says, where there is the same continuing propensity a higher sentence can be imposed (See *Shiel v R* [2017] VSCA 354 at [33], the comments of Redlich JA in *Grossi* [2008] 23 VR 500 at [42], and I also refer to *Shiel* at [40]. Finally the case I have already referred to, *Friel v R* at [36]).

45 The defence having filed Exhibit 12 called upon the prosecution to present further submissions as to exceptional family hardship circumstances. It is appropriate as I indicated to stop at this stage because the circumstances have come about where the defence cannot make further submission until it gets further material which may be submitted by defence.

46 In the circumstances I am prepared to adjourn the completion of this sentence to Tuesday 29 November for the defence to file the material which I will take into account if filed, and if not filed, I will proceed to pronounce the sentence accordingly.

47 ADJOURNED UNTIL TUESDAY 29 NOVEMBER 2022

48 TUESDAY 29 NOVEMBER 2022

49 Since I delivered the first part of these sentencing remarks on 16 November no further material has been tendered by either counsel, in particular insofar as the Markovic submission is concern. I will therefore proceed to complete my sentence.

50 As I have just confirmed, the prosecution's submission remains as detailed in Exhibit A on the plea, at p31, that a custodial sentence with a non-parole period is the appropriate sentence for Ms Becker.

51 The first issue raised by Mr Lewis and Ms Ballard on the plea was parity. The first person that relates to is Mr Akkala. Mr Akkala was sentenced in February 2020 to a total effective sentence of six months with a Community Correction

Order of three years. He had pleaded guilty to two rolled up s82(1) charges, being continuing criminal enterprise charges. In total such related to 23 loans, one involving himself as vendor, in the sum of $7,600,000 roughly.

52 Charge 1 related to eight loans. Charge 2 related to 15 loans and the materials before the Court which sentenced Mr Akkala was such as to indicate that the reward that he got was the sum of $47,150. It is important to note that Mr Akkala in fact had a prior conviction for the very same offence in 2010 where he was sentenced to a period of imprisonment of three and a half years with a non-parole period of one year and nine months for crimes committed against Bankwest. In addition to the amounts detailed as his reward for his criminality in that matter, in this trial he has said he also received cash payments from the purchasers for whom he supplied the false payslips.

53 Importantly, as part of his plea he made a statement as to the role of Ms Becker and others and gave an undertaking to give evidence, which he has of course part fulfilled insofar as the trial of Ms Becker is concerned. The trial of Mr Hassan awaits, and he also has given an undertaking to give evidence in that matter. Full weight was given to the fact of his cooperation insofar as his sentence is concerned and in particular, weight was given to the fact that he pleaded guilty and in such circumstance the sentencing judge allowed what she said was a 'considerable discount on your sentence', [36] of the Akkala sentence. Her Honour regarded the sentence of Mr Anand as of, 'limited use'. [43].

54 As to Mr Akkala's role it is difficult, with respect, to be precise as to what Her Honour in fact found. In [29] of Her Honour's sentence clearly the sentence was pronounced on the basis that Mr Akkala was not aware as to Ms Becker's use of loans to substitute or make up for false deposits set out in the contracts. In his statement to police Akkala said that Ms Becker was

aware that the contracts needed to be correct, see [34]. And true it was that Her Honour described in the sentencing remarks Akkala as a go between, [24] of the sentencing remark.

55 The prosecutor submitted that Akkala said in this trial that he did not know the deposits detailed in the contracts by Ms Becker were false, confirmed at transcript p188. Mr Akkala certainly said the contracts were given to him fully prepared by Ms Becker as they contained many pages. In the Akkala sentence the prosecution's opening at [10(d)] was very general in that it spoke of a combination of actions to produce the false documentation forwarded to the bank in each instance.

56 I consider, having read the remarks and the opening, that Her Honour sentenced Mr Akkala as to him being involved generally in all the false documentation produced and specifically on the basis that he prepared and was paid for the false payslips given to the bank. Mr Lewis submitted as to the payslips that I should consider Mr Akkala and Ms Becker on the same level of culpability with which I agree, albeit not discounting her more major role as I have already found in the criminality.

57 As to the particulars as to the false deposits, false deposits receipt in charge 5, and false statement as to purchase price in charge 4, I find that Akkala had no role in their preparation, nor any knowledge that such were false. However, he certainly was as far as Ms Becker was concerned, the “go between”.

58 Upon the synthesis of arguments put by Mr Lewis he contended Ms Becker could not get a higher sentence than Mr Akkala. I do not accept this submission. Apart from the substantially different factors in the sentencing process, being firstly, the Akkala plea of guilty and hence the role of remorse in the sentence. I make the point that no person suffers for running a trial and

not pleading guilty. That is not the way our system works. However, if you do run a trial you do not get the benefit of remorse, which Mr Akkala did get. The other substantial factor of course that differentiates him from the sentence relevant to Ms Becker is that he gave an undertaking to give evidence, which I have said he has part fulfilled insofar as the trial of Ms Becker is concerned.

59 There is in my view a fundamental difficulty with the Akkala sentence. I consider with great respect, appreciating the importance of judicial comity, that Mr Akkala's sentence, given his prior, the sums involved in each crime, and that the continuing criminal enterprise section increases the maximum penalty to 20 years, that such sentence was extremely lenient despite the substantial mitigatory factors Her Honour had to take into account.

60 I find that the determination in *DPP v Peng* [2014] VSCA 128, [36] and the principles set out there apply here. I consider that given the sentence passed on Mr Akkala, I must place Ms Becker's sentence towards the lower end of the applicable range for these seven charges. But of course, comparison to the Akkala sentence cannot justify a sentence for Ms Becker which is wholly inappropriate or outside the range for such sentence.

61 As the High Court said in *Dalgliesh* (2017) 91 ALJR 1063, in particular at 1072, [49], Ms Becker is entitled to individualised justice and a just sentence based upon the facts relevant to her case. Perhaps what should be added is a sentence which takes into account the principle of parity as much as is possible in the circumstances of this case.

62 I do accept as part of Mr Lewis's synthesis that one needs to take into account that in considering Ms Becker's sentence that Mr Akkala's sentence related to 23 loans and the sum extracted from the bank thereby was approximately $5.2m higher than the sum extracted in the seven contracts that I am dealing with insofar as Ms Becker is concerned. However, such differential insofar as

it relates to Akkala, only highlights my concern as to the Akkala sentence and the need to closely consider the *Peng* principles that I have referred to.

63 There is also a difference in moneys received from the crimes. For the 23 properties he allegedly received $38,000 in introduction fees, watches and a payment allegedly from Mr Anand in the sum of $5000, and on his evidence in the Becker trial he said that he also received unknown payments for the production of the payslips in regard to the seven charges which I am dealing with here

64 What reward Ms Becker received as a result of her criminality in these seven matters is unknown. There is no direct evidence as to precisely what benefit she received from committing these serious crimes. The most stark example available on the evidence is Charge 6 where the vendor, Mr Keller, sold the property to Ms Becker by way of a joint venture in September 2014 for $401,000 and Ms Becker on sold the property in the following December for $495,000.

65 While it must be acknowledged that Mr Keller was totally happy with this as it relieved him of the stress of having a mortgage he could not service, he never expected a profit. He just wanted to be rid of his mortgage. He did not seek or receive any additional payments, albeit that he said in evidence that he signed the contract knowing that it had an inflated purchase price which had been put there by Ms Becker, a purchase price which did not reflect the arrangements made with him.

66 Given the business model, the Court is unable to comprehend, given Ms Becker's role with both the vendors and the purchasers, what the multiple dealings meant to her by way of earnings. However, I am satisfied beyond reasonable doubt that it is quite safe to conclude that the benefits received in regard to these seven crimes exceeded considerably what Mr Akkala, or for

that matter, what Mr Anand received.

67 It is important to note that those benefits did not directly relate to the crimes. However, the benefits that she received through this business model and her multi role insofar as the vendors and purchasers are concerned could only have been received by her as a result of the crimes that she committed in each of Charges 1 to 7. As I said in each crime, it was the money from the bank which populated the transaction with money.

68 Still on the issue of parity I come to the sentence of Mr Anand. He was sentenced 16 months earlier than Mr Akkala in October 2018, in relation to Charges 1 to 2 he received a Community Correction Order of three years and in regard to Charge 3, which was a charge which related to a sale of his own personal property, a fine of $75,000. The offending of Mr Anand took place over eight months from October 2014 to July 2015 when he acted in breach of trust and derogation of his duty as an investment lending manager at Highpoint ANZ.

69 Mr Anand facilitated 20 home loans totalling a sum of $6,559,702. The charges were split with each being a continuing criminal enterprise offence so that eight of the charges related to the period of 2014 and 12 of the charges related to the contracts in 2015. His reward was the facilitating of bonuses from his employer, the bank. Mr Anand was sentenced on the basis of an agreement by the Crown that he did not know that the income or payslips of the applicants were false. See [5] and [6] of the Judge's sentencing remarks. All of the contracts but for his own in Charge 3 were introduced by Mr Akkala to Mr Anand.

70 When one considers the facts relating to his own property and the details as set out that relate to Charge 3 in his case, the manner in which the Crown accepted that he did not know the falsity of the income material presented to

the bank or the payslips seems an amazing concession. However, that was the concession made by the prosecution in that sentence. His role and criminality was to falsify in each case the personal financial assets and liabilities of the applicants. Such falsity was a complicating fact in Ms Becker's trial because the jury had to take into account, what was accepted by all parties, that there was a further separate causative factor being the criminal actions of Mr Anand in their considerations of the matters put to them in regard to Ms Becker.

71 Anand was charged in fact with another s87(2) charge in regard to two properties which he owned, charge 3. Ms Becker was not introduced to him but Akkala was. For this he was given the fine, that is in regard to those two properties of $75,000.

72 Importantly, again by way of difference from Ms Becker's sentence, Anand gave an undertaking to give evidence as to other persons involved in this scheme consistent with his statement made on 14 June 2018 and similar to Mr Akkala, has partly fulfilled such. The discount given to him because of that undertaking was described by the Court in the sentencing remarks at [44] as, 'considerable but not of the highest order', albeit that one must note that such determination to give such evidence pursuant to his undertaking, appears to be the basis for the reason why the Judge did not impose an imprisonment sentence, [45] of the sentencing remarks.

73 In regard to charges 1 and 2 that he faced, he was sentenced on the basis that he received no reward, but for the increase in his bonuses. There is no detail of precisely what that amounted. Again the substantial difference with Ms Becker's case is that Mr Anand pleaded guilty and I will not repeat the comments I made insofar as Mr Akkala is concerned.

74 His Honour in the circumstances accepted the fact of genuine remorse by

Mr Anand and noted that there had been a delay of three years effective from the date of the offending and one year and three months from the date when he was charged.

75 Again as referred by Mr Lewis, the amounts involved as to the financial advantage obtained as to the 20 properties was $4,160,000 higher than the financial amounts obtained in the charges relating to Ms Becker. In all of the matters I should make the point that there was no evidence brought before the Court of what losses, if any, to the bank these extracted amounts from the bank produced. It appears that some contracts were continued, some were not, but the fact is that in none of the sentences, and certainly there was no evidence in this case, as to what happened to the properties after they were bought with the funds extracted by dishonest representations to the bank in any of these seven contracts

76 Considering the Anand sentence, again if I may say so, with respect, and again noting the principle of judicial comity, I consider the sentence imposed upon Mr Anand to have been very merciful. Mr Anand, as I have already said of course, had no direct dealings with Ms Becker and was not sentenced on the basis that he had anything to do with falsifying the contracts or presenting false payslips. But as I have said, he committed his crimes (including the seven we are dealing with here), by way of falsifying the statements of assets and liabilities which were presented to the bank in each case.

77 I have to say as to Ms Becker there was no direct evidence that she was aware of the false statements of assets and liabilities being so presented by Mr Anand. In this regard it could be said such was a very favourable approach to Ms Becker, given the totality of the ruse committed upon the banks and my finding as to her role. However, this was the manner in which the Crown ran the trial and of course I accept that for the purpose of sentencing.

78 As to culpability concerning the seven contracts I assess for the same reason as I concluded in regard to Mr Akkala, that Ms Becker's role, as I earlier analysed, and given that role, her culpability was much higher than Mr Anand. As to financial return I again find beyond reasonable doubt that Mr Anand's return, see [8] of the sentencing remarks, would have been considerably less in regard to the seven charges than Ms Becker. However, as I have said in regard to Akkala, I am unable to quantify precisely what that ultimate reward was because it involved the effecting of the criminality which thereby enabled the resulting ultimate rewards to be obtained by Ms Becker.

79 Hence as to parity with Anand, I consider the principle outlined in *Peng* as appropriate again. I take such principle into account to the extent I can in the circumstances of this case after analysis of the submissions put to me by both counsel. Given my comments in regard to both of those sentences made by Judges of this Court, I should perhaps say that in regard to both sentences rarely in a plea does a Court obtain as full details of criminality as one obtains in a trial, and which this Court has been able to obtain in order to understand the full role of Ms Becker in the seven charges in this case.

80 I then come to the other matters raised by Mr Lewis and Ms Ballard in the plea by way of mitigation. The first matter was the issue of the current COVID situation in this community. There is no doubt that upon a gaol sentence passed on Mr Becker she would face the restrictions currently imposed at the various gaols. She would suffer from restrictions and limitations as to visits and I take those matters, which make any sentence more burdensome into account.

81 The second matter was of course that Ms Becker comes before the Court with no priors whatsoever. Certainly she has had a good character prior to this criminality and I am told has not committed any crimes since those offences.

82 The third matter of substance put in mitigation was the question of delay insofar as Ms Becker is concerned. Mr Lewis stressed, she has not offended again, that is, by way of committing a criminal offence of any sort since she was charged in July 2017. The trial following being charged in July 2017 would, as best as one can reasonably expect, generally without the effects of COVID have occurred in 2019. The impact of COVID and no doubt the difficulty of dealing with a large number of witnesses that were necessary to be called in this case has meant a delay of five years.

83 Mr Lewis submitted on the principles relevant to the issue of delay:

a) that it was an unreasonable extended period during which Ms Becker and her family's life was held on hold and also her life was such that she had the trepidation of a pending trial and a possible sentencing process held over her. I accept that submission.

b) I also accept and there is no evidence otherwise that there has been no further offending during the period since she has been charged and that she has good rehabilitative prospects.

84 Insofar as the question of delay is concerned, I refer to the statement of Vincent AJA, as he was at that time, in *R v Schwabegger* [1998] 4 VR 649, at 659: 'Delay which is not attributable to the offender constitutes a powerful mitigating factor.' See also in this regard *R v Merrett & Others* [2007] VSCA 1, [35]. I take this unreasonable delay which has been wrought upon Ms Becker in these circumstances into account as a powerful mitigating factor.

85 The next topic I want to come to is the personal family difficulties put to me that would affect Ms Becker if any gaol term was imposed. At the original plea date, that is, 15 September 2022, Mr Lewis did not advance a *Markovic* (2010) 30 VR 589, at 589, in [20], argument or submission as to exceptional family circumstances.

86 Ms Becker is 42 and she stopped work after the birth of her youngest son Tom in 2017. Both Tom and Lily, born in 2010, were unfortunately diagnosed as having autism disorder. Each requires assistance at school and all routine tasks. Routine is a very important factor in their care. I have read Exhibit 6 as to Lily from Dr Mittal, consultant paediatrician, and the mental health assessments and plans set out in Exhibit 7 dated 13 September 2022 and further, the letters from Dr Singsit, Exhibit 8 and 9 on the plea as to Tom, in addition to the speech pathology reports from Alina Tuladhar, which make up Exhibit 10.

87 Ms Becker in her statement, see Exhibit 2 on the plea, expressed her concern as to her children's care should she be given a term of imprisonment, in circumstances where they would be subject to the care of her husband, Luke Gnitecki. From her statement it is noted that her husband has a history of an acquired brain injury and has suffered in the past from schizophrenia, see Exhibit 2. In addition to Exhibit 2 are two reports from the Ballarat Mental Health Services dated 30 October 2017 and 16 May 2018. Apparently according to her statement, her husband has limited insight into the problems that history produces for him and continues to produce, and has in fact fundamental opposition to the diagnosis.

88 Mr Lewis, initially at the plea, submitted that his client could not say that the children would not be cared for by the husband, but Ms Becker was particularly concerned, as were her family members, see the statement from her sister, Exhibit 4, Christine, and Kim, her sister-in-law, at Exhibit 5, who were all concerned given that he is employed full time as a linesman, the hours involved and the fact that he would have to work. It is noted that he cares for the family and provides financially. Ms Becker also apparently supplies care to her mother by way of medicines and assisting her in care with her father, and assists her sister Julie who is a schizophrenic and needs Ms

Becker's support.

89 The Court was asked to consider the difficulty in replacing Ms Becker in her major role as carer for the children, and insofar as her relatives are concerned should imprisonment be imposed. At the original plea date Mr Lewis candidly said that while he was not presenting a *Markovic* submission it is clear that given the concerns of Ms Becker, other members of the family would have to step up to assist the father in the raising of the children.

90 The submission as to family issues changed on 7 November 2022 with the filing of Exhibit 12. At [2] Mr Lewis now submitted that exceptional circumstance would apply to Ms Becker's family, specifically her two children, her mother Evelyn and her sister Julie and her mother-in-law Christine.

91 Having read the materials further filed, in particular Exhibits 15 through to 20 on the plea and in particular [26] to [28] in Exhibit 13, I do not consider the situation insofar as her mother, sister or mother-in-law are such as to effect the degree of hardship required to satisfy such a submission. The mother, for example, not only has her husband at home as a carer, but has two daughters and she is cared for by way of having a NDIS plan.

92 The issues raised in Exhibit 13, and Ms Becker's further statement at Exhibit 14 present another picture insofar as consideration of the *Markovic* submission insofar as the two children are concerned. It is noted that in support of this submission Exhibit 9 is relied upon, being the recommendation of 14 September 2022 of Dr Singsit, paediatrician for Thomas. Given that Ms Becker is the primary carer of the children, it was his view that she should be available to provide the requirements detailed to her children and I quote from the report, 'in light of the father's medical challenges', which were not detailed in such report, but I presume have been relayed to the doctor by Ms Becker and would be of the type that I have already referred to.

93 Having read the further statement of Ms Becker, the matter resolves as follows:

1) Ms Becker has two children -

   (a) Lily is 15 and has been diagnosed with being at the mild end of the autism spectrum, see Exhibit 6, p2. She needs speech pathology. She is in year 5 at Ballarat Grammar and receives special assistance there.

   (b) Tom is five and is at school, although the Court received no details of where, and receives at that school specialist speech assistance from a pathologist and has the ability to utilise a teaching aide. As I said, the diagnosis as to autism albeit no assessment of where he is on the range, is contained in Exhibit 9 being confirmed by way of the earlier diagnosis which was Dr Singsit's report, Exhibit 9 of September this year.

   (c) from the statements of Ms Becker both children are totally dependent upon her for care, in the sense she maintains the necessary routine, especially as she says, at night, and such is confirmed, as I have already said by the family statements tendered as Exhibit 4 and Exhibit 5.

2) the father, as I have detailed, works as a linesman, but apparently provides financially for the family.

3) Ms Becker notes in her statement her husband's failure to acknowledge the seriousness of his ongoing schizophrenia. He was apparently referred to the Ballarat Health Service in as late as 2017 and treated for schizophrenia, Exhibit 2, and has been in remission according to that report since 16 May 2018.

4) Her husband according to her statement has been subject to investigation as to the disciplining of the children in November 2017, however no findings were made against him, see Exhibit 14, the letter of Shannon Taylor, Child Protection officer, dated 23 November 2017.

5) Ms Becker in her statement further reports concerns as to his acknowledgement as to his paranoia, and his referral to Dr Alinshi in September 2022 as a result of which apparently his guns were removed by police, see Exhibit 13, [10].

6) At [14] of her statement she indicates that he continues to display paranoia, make suicidal statements, [16], and continues to deny his health issues, [18], and further, questions the extent of his children's diagnoses and the extent of any need for treatment, [19].

7) At [22] Ms Becker details eight specific concerns she has if her children are left with her husband and as such her concern that if she is imprisoned and her children are left with her husband that the Department of Health and Human Services will ultimately be required to take over their care, and indeed take them into custody.

94 In considering this application I point out the following authorities. Firstly, in a Court which one would imagine could be no stronger, comprised of Winneke P and Brooking and Charles JJA in *R v Panuccio*, (1998) VSC 300 (unreported Court of Appeal 4 May 1998). The Court said at [7]:

"Although the Court is not as a matter of compassion and common sense impervious to the consequences of a sentence upon other members of a family or a person in prison, such factors will need to be exceptional or extreme before the Court will tailor its sentence in order to relieve the plight of those other family members. Such a principle is clearly an obvious one, because the Court's primary function is to impose a sentence which meets

the gravity of the crime committed by the person who is being sentenced. There will rarely be a case where a sentence of imprisonment imposed does not have consequential effects upon the spouse, children or other family members who are dependent in one form or other upon the person in prison. Thus it has often been stated that as a general principle of sentencing the Court should usually disregard the impact that a sentence will have upon the members of the family unless exceptional circumstances have been demonstrated."

The Court goes on to say:

"It goes without saying, I think, that the graver the crime for which the prisoner is being sentenced the more difficult it will be to find exceptional circumstances because the relief usually sought and generally necessary to alleviate the flight of the relevant family members affected will require absolution from incarceration."

95 This principle set out was further confirmed in a Court of Appeal case of *Rezai v R* (2020) VSCA 106, [18] to [22] and in [22] where the Court said an exceptional case is made out, "where the plea for mercy is irresistible."

96 I have referred to the *Markovic* principle and in that case at [8] the Court referred to *Polterman,* unreported Court of Appeal decision of 2 August 1974 where the applicant had contended on appeal that he should not have been imprisoned. As a result of him being incarcerated his wife and six month old daughter were living in poverty. Adam J with whom Starke and Crockett JJ agreed, said in response:

"The Court has so often said where one appeals for mercy on the grounds of hardship to a wife or family that the accused ought to have regard to that before embarking on a life of crime and the Court cannot be blamed because it deals with an accused on the merits having regard to the gravity

of the defence, the past circumstance and so on. The Court is not so inhuman as to not be very sorry for those placed in this case of the wife and child because of the criminal activities of the husband. But our task is not to yield to pleas based on sentiment or emotion. However humane we may be, we have a duty to perform and that duty we perform as a Court of Appeal in allowing sentences to stand unless we see something has gone wrong in the sentencing."

97 Again in *Markovic,* [9], the Court referred to *R v Power* where the then Chief Justice said as follows:

"Hardship to [the applicant's] family and loved ones is not normally a circumstance which can lead a court to reduce a sentence. There are no doubt some occasions when it is appropriate to do so... The occasions are rare and I doubt if it is possible to describe them in compendious terms."

98 As indicated therefore by those authorities this submission is subject to a very high bar which must be achieved before it's granted. This Court is of course very concerned with the matters expressed in both of Ms Becker's statements and indeed confirmed to some degree by her family and indeed the medical references that I have referred to. However, I make the following points:

1) The father, whatever his diagnosis, seems to have supported the family since 2017 when Ms Becker stopped work.

2) The father seems to have been in regular employment.

3) As to his care of the children, despite Ms Becker's concern as to his attitude or disposition, no evidence before the Court has been presented of him in any way causing or being responsible for any harm to the children.

4) There is no medical update as to the father's condition or attempt to have him in any way give evidence.

5) I note that he has been in remission from his medical condition since 2018.

6) There has been no school reports presented by any person responsible for the children's treatment by way of teacher, aide or specialist pathologist as to their inabilities to cope.

7) There has been no update report as to either child's condition but for Exhibit 9 which confirms an earlier diagnosis made and proffers the recommendation that I have referred to.

8) I point out such occurring in circumstances where I have been repeatedly advised that this is a private brief.

99 After considerable concern and consideration and given the high bar of such a submission, I have decided that I am not satisfied that the evidence before me establishes a *Markovic* exceptional circumstances situation, even given the lower evidentiary bar. For me to act as sought is essentially to find that it would be inhumane to sentence Ms Becker to gaol in these circumstances. As I say, having considered all the material, indeed the lack of it in some regards as I have commented, and attaching grave concern as to my analysis, I do not find upon the appropriate standard that the high bar has been achieved.

100 I should also make the point that the application depends substantially upon the word of Ms Becker. I am naturally, given the extent of her proved dishonesty, sceptical as to her reliability.

101 That does not of course end the issue as to the consideration of the impact on her of separation from her children and I refer to the analysis again in *Markovic* where the plea of mercy is analysed at [5]. As pointed out in [4] and [5], this Court must give, and does in this instance, consideration to the impact upon Ms Becker while in gaol as to her direct loss of being able to care for her

children, the concerns that she expressed in both affidavits as to their welfare and no doubt those matters will be with her throughout the time that I propose to sentence her to gaol. I accept that such sentence will be more burdensome for her in the particular circumstances as it relates to her children and that such factor is a strong factor of mitigation in regard to her sentence.

102 In regard to this sentence I take into account Ms Becker's personal history set out in Exhibit 1 in particular from [29] to [37]. I also note Mr Lewis's final submission, in particular [2] of his submission, that in all the circumstances, which he describes as somewhat unusual, the penalty that I should impose upon Ms Becker should not include incarceration.

103 I note that advise has been given to both parties as to the fact that I did look at the sentencing snapshots, snapshot 254 of April 2021, as to both the gaol percentage of sentences increasing as it shows in the period from 65 to 71 per cent, that is the period analysed from the years 2015-2016 through to 2019-2020 and in the same time the median sentence and average sentence imposed. I point out of course that such was not a situation that involves continuing criminal enterprise offences.

104 Albeit my finding as to the protracted, planned and sophisticated continuing criminality of a criminal enterprise engaged in by Ms Becker from October 2014 to January 2015 there is some discrimination as to the amounts involved. By that I mean the amounts which were extracted by the dishonest representations from the bank.

105 It is noted that in regard to Charge 6 over $400,000 was obtained by way of the dishonest representation. In Charges 1 and 3 over $350,000. In Charges 4, 5 and 7 in each instance over $300,000 and in Charge 2 the amount was $252,000.

106 Also given my findings it is necessary to take into account that Charge 1

involved only one proven particular of a dishonest representation. Charges 2, 3, 5, 6 and 7 had two proven particulars of dishonest representation and Charge 4 had three proven particulars of dishonest representation.

107 Such discrimination needs to be recognised generally by me in sentencing, in addition to all of the matters and factors that I have detailed. Taking all those matters into account therefore, Ms Becker, I ask you to stand, please.

108 In regard to Charge 1 you will be sentenced to a period of imprisonment of two years.

109 In regard to Charge 2, a period of imprisonment of two years.

110 In regard to Charge 3, a period of imprisonment of two years and six months.

111 In regard to Charge 4, a period of imprisonment of two years and nine months.

112 In regard to Charge 5, a period of imprisonment of two years and nine months.

113 In regard to Charge 6, a period of imprisonment of three years.

114 In regard to Charge 7, a period of imprisonment of two years and nine months.

115 Making the base sentence the sentence imposed on Charge 6 being three years, I impose by way of cumulation upon each other and the base sentence one month of the sentence passed in each of the six charges, so that that makes an addition of six months to the base, making a total effective sentence of three years and six months.

116 I order that the period that you must serve before eligible for parole is 15 months.

117 It is to be noted that it must be recorded in the records of this Court that on each charge you are sentenced as a continuing criminal enterprise offender.

118 Yes, I wish you well. Ms Becker can be taken down, thank you. Yes, anything from either party?

119 MR ALBERT: No, Your Honour.

120 HIS HONOUR: Yes, thank you.

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